

NATURAL RESOURCES COMMISSION

Meeting Minutes September 17, 2008

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, Concord, MA at 7:00 p.m. on Wednesday, September 17, 2008. The following Commissioners were present: Alexander Easterday, Chair, Jamie Bemis, George Lewis and Steve Verrill. Delia Kaye, Natural Resources Director and Cynthia L. Gray, Natural Resources Administrative Assistant, were also present.

COMMISSION COMMENTS: None

CONTINUANCES:

HARVEY / NOI – 15 Harrington Avenue – Replacing a failed septic system for an existing single-family dwelling within Bordering Land Subject to Flooding associated with an unnamed perennial stream, the 200-foot Riverfront Area of Second Division Brook and 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-989**

Applicant, King Harvey appeared before the Commission. Mr. Harvey has been working closely with DNR staff due to the time constraints of the failed septic system. Mr. Harvey's engineer, David Schofield, will be submitting a letter explaining the elevation on the current plan that is in the 100-year floodplain and noting that the driveway will be replaced as is in the same location once the new septic system is installed. Staff recommends issuing an Order of Conditions with Special Conditions requiring the flood elevation and driveway location be shown on a revised plan.

Jamie Bemis moved to close the hearing. Steve Verrill seconded. All so voted. Jamie Bemis moved to approve Findings A and B. Steve Verrill seconded. All so voted. Jamie Bemis moved to issue a standard Order of Conditions with Special Conditions 19-42. Steve Verrill seconded. All so voted.

WARE / NOI – 201 Independence Road and 525 Rear Lexington Road – Constructing two residential dwellings with associated driveway and utilities, all within the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-974. This hearing was continued to 10-01-08**

NASHOBA BROOKS SCHOOL / NOI – 200, 280 Strawberry Hill Road and 3B Macone Farm Lane – Removing one single-family dwelling, constructing four tennis courts and one multi-purpose field, expanding the existing parking lot, constructing additional sidewalks, and stormwater improvements, a portion of this work is within the

200-foot Riverfront area of an unnamed stream and the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-980**

Applicant, E. Kay Cowan, Head of Nashoba Brooks School appeared with Joe March, PE of Stamski & McNary, Hasso Ewing of Ewing Landscapes & Gardens and Thomas Swaim, Esq. Chair Easterday stated that much of the proposed mitigation summary did not meet the definition of mitigation. The Commission discussed the mitigation identified by the Applicant, and that stormwater improvements could not be considered mitigation for work in Riverfront because it was required for other reasons. Similarly, no tree removal and restricted mowing in the 25-foot No Disturb Zone was not mitigation. The Commission questioned whether the proposed parking, which is primarily for a future expansion, could be reduced to further minimize work in Riverfront. Joe March stated that this would not change the amount of work in riverfront because of the angle of the field. Mr. Swaim stated that use of the Annursnac Hill tennis courts cannot be considered as a viable alternative because the regulations require that an applicant have to ability to purchase a parcel, not lease.

Joe March questioned whether mitigation was required for Riverfront projects that do not alter less than 5,000 square feet or 10 percent of the site. Mr. March stated his opinion that the proposed work would not impair wildlife habitat or remove trees. Less than 1 percent of Riverfront Area alteration would take place. Delia Kaye stated that mitigation is always required for work in Riverfront Area.

Delia Kaye asked whether the Applicant had incorporated the letter of map amendment from FEMA. Joe March responded that they will review this. Staff will forward Engineering comments to Joe March for response.

Mr. Swaim stated that the school might consider a 10-year deed restriction on the property. The Commission suggested a Conservation Restriction be placed on the wet meadow as mitigation. There are three CRs on Macone Farm Lane that this could tie into. The Commission requested that if a CR wasn't feasible for the entire meadow, that the Applicant consider a creative solution that restricted a portion of the parcel, such the south or west portions, or an "L" shape to connect with the adjacent CRs. Attorney Swaim stated that he would bring this request to the school's Board of Trustees.

This hearing was continued to October 1, 2008.

HILL / NOI - 107 Westford Road – Tree removal, stone wall construction, stone walls reconstruction, and driveway reconstruction in the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-981

After discussion, Jamie Bemis moved to close the hearing. Steve Verrill seconded. All so voted.

TOCIO / NOI – 506 Old Bedford Road – Constructing nine single-family residential units, a sewage disposal system and stormwater treatment facility, a portion of which is

within the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-977**.
This hearing was continued to 10-01-08

GUINThER / NOI – 94 Elm Street - The proposed project involves installing an irrigation system, restoring an existing retaining wall, constructing a stone wall, tree removal, invasive species removal, brush removal and replacing with landscaped lawn in Bordering Land Subject to Flooding, in the 200-foot Riverfront Area of the Sudbury River, and the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-987**

Ben Ewing of Stamski & McNary appeared with the Applicant, Troy Guinther. Three separate planting areas are shown on the further revised plan. There is a small amount of grading, approximately 2 feet, behind the stone wall. A copy of the further revised plan has been forwarded to Natural Heritage & Endangered Species Program (NHESP). The Applicant expects a response within one week. The Commission requested that the Applicant show a table on the plan of trees removed and trees put in and to break it out by zones: 0-25 ft., 25-50 ft., 50-100 ft. and 100-200 ft.

This hearing was continued to October 1, 2008.

BJERKE / NOI – 670 Main Street – Demolition and reconstructing a single-family dwelling, shed removal, constructing a garage, driveway removal and relocation, constructing brick or concrete paver patios, grading, tree removal and replacement within the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-990**

Matthew Hall of Mattworks, Ltd. appeared on behalf of the applicant. Boundary markers will be installed in the fall. A Special Condition of the Order of Conditions will include the installation of the bollards and silt fence. Steve Verrill moved to issue a standard Order of Conditions with Special Conditions 19-48. Jamie Bemis seconded. All so voted.

NEW APPLICATIONS:

HUNT / RDA #08-12 - 58 Farmers Cliff Road – Installing a well trench for a geothermal heat pump within the 200-foot Riverfront Area and Bank of a small unnamed body of water.

Applicant, Jeff Hunt appeared. Two wells will be dug approximately 15 feet apart to create a greater capacity, which is shown on the revised plan. The work should take about one week. The Applicant will provide a revised site plan showing the two wells before commencing work. The snow barrier will be extended to the corner of the dwelling up to the road and the limit of work will be identified with a silt fence and hay bale barrier. The Commission will not be confirming the wetland boundaries. George Lewis moved to issue Positive Determination #2b and a Negative Determination 2 with Special Conditions. Steve Verrill seconded. All so voted.

KILMARTIN / RDA #08-13 – 104 Nimrod Drive – Determination whether an area is subject to jurisdiction of the Wetlands Protection Act.

Brian Butler of Oxbow Associates appeared together with Mr. and Mrs. Kilmartin. This is a tear-down and rebuild project with grading. The house sits in seasonally high ground water. DNR staff noted that this project would be better served by filing a Notice of Intent application. Jamie Bemis moved to issue a Positive Determination #1 and #2b. George Lewis seconded. All so voted.

THE THOREAU FARM TRUST / NOI – 341 Virginia Road – Sitework associated with the construction of an additional parking area and greywater disposal system at the Henry David Thoreau Birth House in the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-991**

Gary Shepard of David E. Ross Associates appeared with Lucille Scott of Thoreau Farm Trust and Nick Reed, Landscape Architect. The Thoreau Birth House has been renovated and repaired and is operated as an educational facility. At some point in time, a barn will be built that will be handicap accessible. Pervious pavement is proposed for the parking area; the driveway will be gravel. The Applicant will review the proposed plan with John Minty to see if the width of the parking lot can be reduced to 18 feet instead of the proposed 24 feet. The Applicant will provide specifications for the sidewalk.

The greywater system is designed for a 100-year storm with no need for detention basins and is less salt. The open area (Lot A) would be proposed as agricultural, possibly an orchard area. There would be an open space to meadow to forest concept which would exemplify the educational piece of the project. The Commission suggested that a Special Condition of the Order of Conditions include a vacuum sweeper to be used a minimum of 2 times/year for sand removal. The Long-Term Pollution Plan will note that there is to be no washing of motor vehicles on the premises. DNR staff recommends that two erosion control barriers be implemented because of the vast amount of invasives removal. One line should be at the limit of site work and the second at the wetland line.

This hearing was continued to October 1, 2008.

REQUEST TO EXTEND:

DANE – 349 Walden Street, **DEP File #137-859**

Applicant, Michael Dane appeared. Mr. Dane noted that Paul Mahoney has completed the constructions drawings and Atrium Custom Homes has provided the construction details. Because Mr. Dane purchased this property mid-way through the existing Order of Conditions, he feels that he could complete this project in or within two full building seasons to and including December 31, 2010. Steve Verrill moved to extend the Order of Conditions to December 31, 2010. Jamie Bemis seconded. All so voted.

CERTIFICATES OF COMPLIANCE/Duplicate CERTIFICATES OF COMPLIANCE:

HUGGINS – 95 Coolidge Road, DEP File #137-869 – update only

Despite the Registered Professional Engineer's letter that stated "...the site construction at 95 Coolidge Road has been constructed in accordance with the Order of Condition", the as-built plan showed that unauthorized work has occurred, including grading beyond the limit of work, including fill in wetland (beyond the erosion control limit shown on the approved plans). In addition, flood storage was not created to mitigate for the impacts in BLSF as proposed by the applicant and approved by the Commission. Staff requested additional information, including a revised as-built plan to more clearly show the differences between what was permitted and what was actually constructed. The new plan has been received and DNR staff is reviewing that plan to determine the full extent of the violations. We will be working with the applicant to resolve the violations prior to any action on the request for a Certificate of Compliance.

TOWN OF CONCORD (Duplicate) – 341 Virginia Road, DEP File #137-512

George Lewis moved to issue a Duplicate Certificate of Compliance. Steve Verrill seconded. All so voted.

OTHER BUSINESS:

Marabello Enforcement Order

Attorney Frank DiLuna attended this hearing as an observer. Delia Kaye informed the Commission that John Marabello Sr. and Jr. (Marabello Farms); Frank DiLuna Esq., Vincent Mula (Boston Bark), Judith Pickett Esq., Bill Lahey Esq. (Town Counsel), John Minty, and Delia Kaye met this morning to discuss the Enforcement Order and schedule of Boston Bark phasing out from the site. The meeting was productive, and Boston Bark will provide information on the amount of truck traffic required to bring in raw material to finish the compost. A timeframe of having all activities cease and Boston Bark equipment offsite by July 1, 2009, was discussed.

At this morning's meeting, all parties agreed to a two-phase Enforcement Order. The first phase will include the current wetland delineation, and the second phase will include the historic wetland delineation and restoration plan. Mr. Marabello indicated that he intends to return the site to agriculture. Staff recommends that activities to turn and move the mulch piles may be allowed in the 100-foot buffer zone, provided that Boston Bark places snow fence at the top of the mulch piles and along the berm to demarcate a limit of work. The snow fence will be placed 10 feet from the top of slope (away from wetlands) on the mulch piles, and 25 feet from the top of the berm (away from wetlands) in the northwest corner of the site. Mr. DiLuna requested a two-week extension to Phase 1, which Delia Kaye agreed to bring to the Commission. After discussion, the Commission agreed that Phase 1 of the Enforcement Order could be extended for two weeks.

Ms. Kaye requested that the existing conditions plan show permanent features such as property lines, buildings, and the irrigation pond so that the delineation could be tied to

features and understood in the field. The mulch piles will not be included in the existing survey plan. Mr. DiLuna agreed that this was reasonable.

Phase 2 of the Enforcement Order will be completed once Boston Bark has left the site, by September 1, 2009. Staff will prepare an Amended Enforcement Order to reflect these changes. Mr. DiLuna informed the Commission that he is searching for aerial photos from 1984 and 1993 to establish baseline conditions from when Mr. Marabello purchased the property.

Ms. Kaye informed the Commission that at this morning's meeting Mr. DiLuna withdrew electronic mail correspondence dating back to 2002 from his public information request. Mr. DiLuna stated that he was reconsidering this, given that the Commission had entered into executive session and therefore was preparing for litigation. The Commission stated that the executive session was in response to Mr. DiLuna's public information request.

NRC Representative to HDC update – Jamie Bemis will check with the Chair of the HDC or Lara Kritzer to see if they may have recommendations for consideration.

Approve NRC Minutes June 18, 2008

Jamie Bemis moved to approve the June 18, 2008 meeting minutes. Steve Verrill seconded. All so voted.

Approve NRC Minutes July 16, 2008

Steve Verrill moved to approve the July 16, 2008 meeting minutes. Jamie Bemis seconded. All so voted. Alexander Easterday abstained.

Approve NRC Minutes July 22, 2008 – tabled to next scheduled meeting due to a lack of a quorum.

Executive Session:

The Commission adjourned at 8:10 p.m. for an Executive Session to discuss Marabello/Boston Bark. Steve Verrill moved to suspend the regular meeting in order to conduct the Executive Session. George Lewis seconded. All so voted. The regular Commission meeting was resumed at approximately 8:20 p.m.

The meeting adjourned at 10:00 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Director

Cynthia L. Gray, Natural Resources Administrative Assistant